

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA  
COBB JUDICIAL CIRCUIT

ORDER  
AMENDMENT TO THE ORDER ESTABLISHING  
COURT-ANNEXED MEDIATION

The Superior Court Judges Council of the Cobb Superior Court, Cobb Judicial Circuit, has determined it necessary to amend the order establishing court-annexed mediation dated the 5th day of January, 1993.

THEREFORE, IT IS NOW ORDERED that the above mentioned Local Rule of Court be amended as follows:

Rule 9. Appearance

The presence of parties at all mediation conferences is required unless the court finds that a party is a non-resident or is incapacitated. In domestic relations cases, all parties are physically required to attend the mediation session; however, in general civil cases, the requirement that a party appear at a mediation conference is satisfied if the following persons are physically present:

- (a) The party and/or
- (b) The party's representative if that representative has
  - (i) full authority to settle without further consultation, and
  - (ii) a full understanding of the dispute and full knowledge of the facts;
- (a) A representative of the insurance carrier for any insured party if that representative has full authority to settle without further consultation, except that telephone consultations are permitted.

SO ORDERED this 15th day of February, 2000.

Chief Judge Robert E. Flournoy, Jr.  
Cobb County Superior Court

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA  
COBB JUDICIAL CIRCUIT

ORDER  
AMENDMENT TO THE ORDER ESTABLISHING  
COURT-ANNEXED MEDIATION

By agreement of the Superior Court Judges Council of the Cobb Superior Court, Cobb Judicial Circuit, it is necessary to amend the order establishing court-annexed mediation dated the 5th day of January, 1993.

NOW THEREFORE IT IS ORDERED that the court-annexed Mediation Rules be amended as follows:

Rule 1(b) of the Mediation Rules in Exhibit "A" entitled "Referral to Mediation" is hereby amended by adding new sub-sections (7) and (8) which read as follows:

- 7) Temporary hearings in domestic relations cases
- 8) Contempts in domestic relations cases.

SO ORDERED this 22nd day of March, 1993.

Chief Judge Watson L. White  
Cobb County Superior Court

COBB COUNTY SUPERIOR COURT

MEDIATION RULES



## Cobb County Superior Court

### Mediation Rule

The following rule is adopted by the Georgia Supreme Court as an experimental local rule pursuant to Uniform Superior Court Rule 1.2. The rule is adopted for a one year period and will be reviewed at the end of one year by the Georgia Commission on Dispute Resolution.

DEFINITION: Mediation is defined as “. . . a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties.” The purpose is to open up lines of communication and to explore all possibilities of settlement in order to resolve the dispute. The role of the mediator is to help the parties analyze the issues and generate alternatives for a mutually agreeable and voluntary settlement. The role of the parties is to recognize that people in dispute can come to the table to negotiate in good faith to try to resolve their differences. The role of the mediation program is to assist the court in an administrative capacity to insure uniformity and efficiency. The mediation conference is informal, confidential and non-adversarial. The mediator has no decision-making power. Any agreement reached will be by mutual consent of the parties. A written agreement that is signed may be filed and submitted to the court with the parties’ consent. If an agreement is reached but not reduced to writing, or reduced to writing but not filed, a joint notice of dismissal must be filed.

#### RULE I. Referral to Mediation.

(a) Except as hereinafter provided, any contested civil or domestic matter may be referred to mediation. Cases shall be screened by the judge or the mediation office to determine

- (1) Whether the case is appropriate for mediation;
- (2) Whether the parties are able to compensate the mediator.

(b) Exclusions from Mediation. The following actions shall not be referred to mediation except upon petition of all parties or upon sua sponte motion of the court:

- (1) Appeals from rulings of administrative agencies;
- (2) Forfeitures of seized property;
- (3) Habeas corpus and extraordinary writs;
- (4) Bond validations;
- (5) Declaratory relief;
- (6) URESA actions.

- (c) Discovery. Discovery may continue throughout mediation.
- (d) The scheduling of a case for a mediation conference shall not remove the case from assignment to a judge, interfere with discovery, nor serve to postpone scheduled motions before the court. The court may refer the matter to mediation before any hearings before the court.
- (e) Interim or Emergency Relief. A party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such a motion is pending absent a contrary order of the court or a decision of the mediator to adjourn pending disposition of the motion. Time for completing mediation shall be tolled during any periods where mediation is interrupted pending resolution of such a motion.

RULE 2. Timing of ADR Processes.

- (a) Notice. Within 10 calendar days after the case is referred to mediation, one of the parties shall contact the mediation department with the name of the agreed upon certified mediator and the date and time for mediation. In a multi-party case the case shall not be referred to mediation until the time for an answer by all parties has elapsed. Notice to the mediation department is technically plaintiff's responsibility. Upon agreement, however, anyone may schedule the mediation.
- (b) Conference or Hearing Date. Unless otherwise ordered by the court, the first mediation conference shall be held within 60 calendar days after the appointment of the mediator.

RULE 3. Exemption from Mediation.

A party may move, within 15 days after the case is referred to mediation, to dispense with mediation if:

- (a) The issue to be considered has been previously mediated;
- (b) The issue presents a question of law only;
- (c) other good cause is shown before the judge to whom the case is assigned.
- (d) The issues have been referred by consent order of court to a private provider of

mediation services which meets the minimum qualifications set forth herein.

**RULE 4. Appointment of Mediator.**

- (a) The parties shall choose a mediator from the list of certified mediators in the mediation department. Should the parties fail to agree upon a mediator, the mediation department will appoint a mediator from the rotational list in the mediation department.
- (b) Disqualification of a Mediator. Any party may move to enter an order disqualifying a mediator for good cause. If the court rules that a mediator is disqualified from hearing a case, an order shall be entered setting forth a qualified replacement from the rotational list of certified mediators in the mediation office. The motion disqualifying the mediator shall be presented to the mediation office which shall present the motion to the judge to whom the case is assigned.

**RULE 5. Mediator Qualifications for Certification.**

The qualifications for certification as a mediator shall be determined by the Superior Court Judges of the Cobb Judicial Circuit. The qualifications shall not be less than the minimum qualifications set out in the Uniform Rules for Alternative Dispute Resolution Programs. Appropriate use of non-lawyer mediators is encouraged. The qualifications shall be approved by the Georgia Commission on Dispute Resolution and shall be filed with the Georgia Supreme Court as an appendix to this rule.

**RULE 6. Compensation of Mediators.**

- (a) Parties are encouraged to agree upon compensation of the mediator at the first mediation conference. Relevant factors to be considered in determining an appropriate fee include the complexity of the litigation, the degree of skill necessary to mediate the dispute, and the ability of the parties to pay. Mediators are required to list their fee schedules as part of their applications. The court will review the fee schedules for reasonableness. Daily rather than hourly rates are encouraged. When deemed appropriate, the mediator may be compensated a maximum of one hour preparation time per case.
- (b) If the parties are unable to agree upon compensation of the mediator, then the assigned judge at the interlocutory hearing or final trial may order either or both parties to pay or share the cost of the mediator. When the compensation is set by the court, the costs will be predicated upon the complexity of the litigation, the degree of skill necessary to mediate the case, and the ability of the parties to pay.

Mediators are required to provide pro bono hours and hours at reduced rates to defray mediation costs for parties with limited ability to pay. The number of hours required will be determined by the Superior Court Judges of the Cobb Judicial Circuit.

- (c) The compensated mediator shall return \$15.00 per case to the mediation office by the close of the next business day following receipt of payment or partial payment of mediation compensation.

RULE 7. Immunity.

Immunity for mediators is governed by the applicable provisions of the Uniform Rule.

RULE 8. Confidentiality.

Confidentiality for the mediation process is governed by the applicable provisions of the Uniform Rule.

RULE 9. Appearance.

The presence of parties at all mediation conferences is required unless the court finds that a party is a nonresident or is incapacitated. The requirement that a party appear at a mediation conference is satisfied if the following persons are physically present:

- (a) The party and/or
- (b) The party's representative if that representative has
  - (i) full authority to settle without further consultation, and
  - (ii) a full understanding of the dispute and full knowledge of the facts;
- (c) A representative of the insurance carrier for any insured party if that representative has full authority to settle without further consultation, except that telephone consultations are permitted.

RULE 10. Sanctions For Failure to Appear.

If a party fails to appear at a duly noticed mediation conference without good cause, the mediation department shall notify the judge to whom the case is assigned. The judge, upon motion, may impose sanctions, including an award of mediator and attorney costs, against the party failing to appear.

RULE 11. Communication with Parties.



The only ex parte communication outside of the mediation conference shall be for the purposes of verifying appointment times and locations.

RULE 12.       Communication with the Court.

Communications between the mediation department and the court and between mediators and the court are governed by the applicable provisions of the Uniform Rule.

RULE 13.       Completion of mediation.

(a) Mediation shall be completed within 45 days of the first mediation conference unless extended by order of the court. The motion asking for extension of the mediation shall be submitted to the mediation office which shall present the notion to the judge to whom the case is assigned.

(b) Length of Mediation. Mediation conferences are scheduled for three hours. However, the duration of the mediation conference may be shorter or longer, depending upon the assessment of progress by the mediator and the parties.

(c) The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference notwithstanding Rule 2(b). No further notification is required for parties present at the adjourned conference.

(d) Agreement. If an agreement is reached, it shall be reduced to writing within 10 calendar days, signed, and sent to opposing counsel. Counsel then has 10 calendar days to review, sign, and file the document with the clerk's office. It is plaintiff's responsibility to draw the agreement unless all parties determine otherwise.

(e) If a partial agreement is reached, it shall be reduced to writing and signed by the parties and counsel, if any.

(f) If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the mediation office. The mediation office shall notify the judge to whom the case was assigned of the lack of an agreement. With the consent of the parties, the mediator's report may also identify any pending notices or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

RULE 14.       The Mediation Conference.

(a) Not less than one week prior to the mediation, attorneys should submit a Mediation Statement containing a brief summary of the facts and issues in the case. The statement should also summarize any efforts which have been undertaken by counsel to settle the case and any specific problems which have created a hindrance to the settlement of the case. The Mediation Statement is given to the mediator and is strictly confidential. It will not become of record in the court, nor will it be read by opposing counsel or any party. Counsel may also wish to bring additional work to the conference as there may be a period of waiting if the mediator chooses to “caucus,” or meet privately with each side. During the conference, counsel should be prepared to discuss the facts and evaluate the case. The ultimate decision-making authority of whether or not to settle the case rests with the parties, with the advice of counsel.

(b) Notifying the Mediator. The mediator must be notified at least forty-eight hours before the mediation (not including weekends and holidays) of any rescheduling or cancellations, for whatever reason, regardless of whether relief has been granted by the court. Settlement before mediation is encouraged. It is the responsibility of the Plaintiff’s counsel to notify the mediation office and the mediator in a timely manner of any settlement before the initial conference. Written confirmation is required.

(c) The Role of Counsel. The mediator shall at all times be in control of the mediation and procedures to be followed during the mediation. Counsel shall be permitted to communicate privately with their clients. With the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.

(d) Conflicts. For purposes of conflict, as contemplated under the Uniform Rules of Superior Courts, the mediation procedure shall be construed as being a non-jury proceeding and counsel and the parties may rely upon said designation in resolving any scheduling conflicts.

(e) Scheduling and Rescheduling.

(i) Mediation conferences generally last three hours and are scheduled from 9:00 AM - 12:00 PM, 12:00-3:00 PM, 4:00-7:00 PM, and 5:00-8:00 PM. The times are contingent upon space in the courthouse being available. Any scheduled mediation after 5:00 PM, on the weekend, or holidays shall only be held with the consent of all parties and their counsel. Other times and locations may be determined by agreement of the parties.

(ii) Completion of mediation is a prerequisite to trial. The parties, within ten (10) days of the date of referral to mediation, may agree upon a mediator and a date and time for mediation. The rules require that the initial mediation conference be held within sixty (60) days after the filing of the case. It is the responsibility of Plaintiff’s counsel or of the Plaintiff to contact the mediation office within the ten (10) day period with the mediator and date selection. Failure to do so will result in the assignment of a mediator and a date by the mediation office which cannot be changed absent good cause shown.

The party or attorney who is requesting that a mediation session be rescheduled must obtain

consent from opposing counsel and the assigned mediator. The mediation office must also be notified of any rescheduling attempts. Cancellations (with no attempt to reschedule) of the mediation conference will only be permitted where one or both parties has applied for relief from the judge to whom the case has been assigned, or is in compliance with the Uniform Superior Court Rules as said rules relate to conflicts. NO OTHER UNILATERAL CANCELLATIONS OR RESCHEDULES WILL BE PERMITTED AND ARE A VIOLATION OF THE COURT RULE TO ATTEND.

RULE 15. Administration of the Program.

The mediation office shall be under the Court Administrator. It shall be responsible for all administrative matters pertaining to the program and shall be served with copies of any papers pertaining to mediation. The program must be notified of all cancellations. Cancellations due to settlement must be confirmed in writing. The program must also be notified of any settlements occurring after mediation. The court retains ultimate authority over the program.

RULE 16. Evaluation.

The mediation department will provide to the Office of Dispute Resolution information which will allow an evaluation of the program. This information will be provided on an ongoing basis. The model for this evaluation will be designed by the mediation department in cooperation with Dr. Margaret Herrman of the Carl Vinson Institute of Government. Payments to the Carl Vinson Institute of Government for costs incurred in the design of this model will be paid by the Georgia Commission on Dispute Resolution.